

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SCOTT C. SMITH,

Plaintiff,

v.

CAROLINE HARDY, *et al.*,

Defendants.

Case No. C06-5455 RBL/KLS

REPORT AND RECOMMENDATION

**Noted For: February 2, 2007**

This 42 U.S.C. § 1983 civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is Plaintiff's motion for a temporary injunction. (Dkt. # 18). After carefully reviewing Plaintiff's motion, Defendants' response, and the parties' supporting declarations and exhibits, the Court submits the following report, recommending that Plaintiff's motion be denied.

**I. STATEMENT OF FACTS**

Plaintiff is a Washington State prison inmate currently incarcerated at Stafford Creek Corrections Center (SCCC). On August 9, 2006, Plaintiff filed a Complaint alleging that his First and Fourteenth Amendment rights were violated when the mailroom rejected a piece of outgoing

1 mail. Plaintiff now seeks preliminary injunctive relief to prevent SCCC staff from “the illegal  
2 detention of plaintiff’s outgoing mail #14964.” (Dkt. # 18).

3 On or about June 6, 2006, Plaintiff attempted to mail a letter to James Killgore, a non-  
4 immediate family member. (Dkt. # 26, ¶ 3, Exh. A). The letter in question is set forth in full as  
5 follows:

6 Scott Smith  
7 278891 FNC 23  
8 191 Constantine Way  
9 Aberdeen WA 98520-9504

10 James Killgore -  
11 Greetings and Good Health!

12 Prodigal son has returned to the fold seeking spiritual encouragement with  
13 mature, understanding Christians due to need for closure of disheartening  
14 experiences and recent loss. Broken spirit of prisoner, serving time for a  
15 crime I did not commit, needs nurturing.

16 In an unrelated matter, I sought assistance, by mail, for manuscript  
17 preparation, but oppressive prison guards prohibit solicitation of help.

18 Writing/publishing would be a positive contribution as a legacy to my 8 year-  
19 old daughter, Michiko

20 I am prohibited from requesting help so it must be done through prayer.  
21 Please pray with me in this matter.

22 Please do not refer me to a desensitized prison ministry.

23 You and yours are in my prayers.

24 Thank you for genuinely listening and for your generous kindness.

25 Grace, mercy and peace.

26 Humbly –

Scott

(Dkt. # 26 at ¶ 7, Exh. A).

1 The mailroom sergeant rejected the letter and issued mail rejection # 14964. (*Id.* at ¶ 4). On  
2 June 7, 2006, Plaintiff was notified of a mail rejection due to improper solicitation of goods or  
3 money contrary to DOC Policy. (*Id.* at ¶ 8, Exh. B). Plaintiff appealed the first level rejection of the  
4 letter, the violation of DOC Policy No. 450.100, Section VI, paragraph A(b), which prohibits the  
5 solicitation of goods or money from other than the immediate family of the offender without the  
6 prior permission of the Superintendent. (*Id.* at ¶ 9). Section VI of DOC Policy No. 450.100  
7 provides that outgoing mail may be disapproved for the following reason:

8  
9 The *mail* solicits goods or money from other than the *immediate family* of the  
10 offenders without the prior permission of the Superintendent. This provision  
11 may not be construed to preclude the purchase of non-*contraband* goods or  
12 payment for such goods which have been approved by the Superintendent/  
13 designee.

14 (*Id.* at ¶ 9, Exh. C).

15 On July 6, 2006, the first level violation was upheld and Plaintiff was advised via written  
16 notice that his appeal was rejected. (*Id.* at ¶ 10, Exh. D).

## 17 II. STANDARD OF REVIEW

18 Under the Prison Litigation Reform Act, 18 U.S.C. § 3626 (PLRA), Plaintiff is not entitled to  
19 prospective relief unless the court enters the necessary findings required by the Act:

20 The court shall not grant or approve any prospective relief unless the court finds that  
21 such relief is narrowly drawn, extends no further than necessary to correct the  
22 violation of a Federal right, and is the least intrusive means necessary to correct the  
23 violation of the Federal right. The court shall give substantial weight to any adverse  
24 impact on public safety or the operation of a criminal justice system caused by the  
25 relief.

26 18 U.S.C. § 3626(a)(1)(A).

In civil rights cases, injunctions must be granted sparingly and only in clear and plain cases.

1 Rizzo v. Goode, 423 U.S. 362, 378 (1976). The purpose of a preliminary injunction is to preserve  
2 the status quo between the parties pending a final determination on the merits. Univ. of Texas v.  
3 Camenisch, 451 U.S. 390, 395 (1981); Chalk v. United States Dist. Ct., 840 F.2d 701, 704 (9th Cir.  
4 1988). It is appropriate to grant in a preliminary injunction “intermediate relief of the same  
5 character as that which may be granted finally.” De Beers Consol. Mines v. U.S., 325 U.S. 212, 220  
6 (1945); Kaimowitz v. Orlando, 122 F.3d 41, 43 (11th Cir. 1997).

7  
8 In order to justify the extraordinary measure of injunctive relief under Federal Rule of Civil  
9 Procedure 65, the moving party bears a heavy burden. Canal Authority of the State of Florida v.  
10 Callaway, 489 F.2d 567 (5th Cir. 1974). A party seeking a preliminary injunction must fulfill one of  
11 two standards: the “traditional” or the “alternative.” Johnson v. California State Bd. Of  
12 Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995); Cassim v. Bowen, 824 F.2d 791, 795 (9th Cir.  
13 1987). Although two tests are recognized, they are not totally distinct tests. Rather, they are  
14 “extremes of a single continuum.” Funds for Animals, Inc. v. Lujan, 962 F.2d 1391, 1400 (9th Cir.  
15 1992).

16 Under the traditional standard, a court may issue preliminary relief if it finds that: (1) the  
17 moving party will suffer irreparable injury if the relief is denied; (2) the moving party will probably  
18 prevail on the merits; (3) the balance of potential harm favors the moving party; and (4) the public  
19 interest favors granting relief. Cassim, 824 F.2d at 795. Under the alternative standard, the moving  
20 party may meet its burden by demonstrating either (1) a combination of probable success and the  
21 possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships  
22 tips sharply in its favor. Id. at 795. Under either test, Plaintiff fails to carry his burden to obtain  
23 preliminary injunctive relief in this case.  
24  
25

### III. DISCUSSION

#### A. Plaintiff Has Not Shown That He Will Suffer Irreparable Injury

Plaintiff argues that he has demonstrated irreparable injury by showing a violation of his First Amendment Constitutional right. (Dkt. # 25). Plaintiff states in his declaration that he “properly mailed a letter to James Killgore. The letter did not violate any prison rules. The letter did not solicit goods or money. No valid reason existed for the interception of the letter.” (Dkt. # 18, Attach. 2 at 2). Plaintiff provides no evidence to support these conclusory statements and fails to demonstrate any injury that he will suffer if the letter is not delivered.

Conversely, the evidence provided to the Court indicates that SCCC staff rejected Plaintiff’s letter because it improperly solicited goods or money from a non immediate family member contrary to Section VI of DOC policy No. 450,100. Plaintiff references the solicitation prohibition, yet still suggests that the recipient provide assistance with writing/publishing:

In an unrelated matter, I sought assistance, by mail, for manuscript preparation, but oppressive prison guards prohibit solicitation of help. Writing/publishing would be a positive contribution as a legacy to my 8 year-old daughter, Michiko.

(Dkt. # 26, Exh. A). The Court finds that it is reasonable to conclude that the mailroom staff had a valid reason to intercept the letter for violation of DOC policy.

Because Plaintiff has failed to provide evidence to support his claim of irreparable harm due to a First Amendment violation, the Court recommends that his motion for preliminary injunction be denied.

#### B. Plaintiff Has Not Shown That He Is Likely To Succeed On the Merits Of His Case

Plaintiff argues that his right to outgoing mail is significantly greater than his right to incoming mail and that outgoing personal correspondence does not, by its nature, pose as serious a threat to prison order and security, as does incoming correspondence.

1 Defendants respond that the mailroom properly rejected the letter because it improperly  
2 solicited goods or money from a non immediate family member contrary to DOC policy.  
3 Defendants argue further that prison officials have a legitimate penological interest in inspecting an  
4 inmate's outgoing mail. Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995). Regulation of both  
5 incoming and outgoing mail is justified to prevent criminal activity and to maintain prison security.  
6 O'Keefe v. Van Boening, 82 F.3d 322, 326 (9th Cir. 1996).

7  
8 Prison officials may justifiably censor out-going mail containing information about proposed  
9 criminal activity and may also visually inspect out-going mail to determine whether it contains  
10 contraband material which threatens prison security or material threatening the safety of the  
11 recipient. See Procunier v. Martinez, 416 U.S. 396, 413 (1974); Witherow, 52 F.3d at 266.  
12 Additionally, the DOC mail policy "authorizes the inspection and reading of incoming and outgoing  
13 mail by qualified members of the facility staff. The inspection shall serve to prevent offenders from  
14 receiving or sending contraband, or any other material that threatens to undermine the security and  
15 order of the facility, through the mail; and to prevent criminal activity." (Dkt. # 26, Exh. D).

16 The mailroom inspected and rejected Plaintiff's outgoing mail to prevent the solicitation of  
17 goods without prior permission. (Id.). As DOC policy contemplates, unchecked mail solicitation  
18 could lead to the importation of contraband or the promotion of criminal activity both within and  
19 without the facility. If an inmate wishes to solicit goods or money from a non immediate family  
20 member then it is appropriate for the inmate to clear the request with the Superintendent to ensure  
21 that the request is necessary and legitimate and does not pose a threat to institutional security. (Id.,  
22 Exh. D, DOC Policy Directive 450.100(VI)(A)(6)).

23  
24 The Court finds that SCCC staff had a legitimate penological interest in inspecting and  
25 rejecting Plaintiff's letter. Prison officials have an obvious security interest in reviewing and issuing

1 prior approval of any mail that may constitute solicitation. Although Plaintiff states that he did “not  
2 violate any prison rules,” and that his letter did “not solicit goods or money,” review of the letter  
3 demonstrates that Plaintiff was aware of the solicitation prohibition and was attempting solicitation.  
4 (Id., Exh. A). Thus, Plaintiff cannot show a likelihood of prevailing on his First Amendment claim  
5 and the Court recommends that his motion for injunctive relief be denied.

6  
7 **C. Plaintiff Has Not Shown That the Balance Of Potential Harm Favors The Moving  
Party Or That the Public Interest Favors Granting Relief**

8 The potential harm alleged by Plaintiff is the continuing scrutiny of his outgoing mail and  
9 the arbitrary and capricious restriction of his outgoing mail. (Dkt. # 18, Exh. 1, p. 8).

10 Defendants argue that the potential harm to Defendants of unchecked mail solicitation by  
11 inmates is enormous. If Defendants were enjoined from enforcing DOC mail restriction policies,  
12 institutional security could be gravely threatened by an influx of contraband. Defendants note further  
13 that Plaintiff is not prohibited from sending a solicitation letter to a non-immediate family member,  
14 but that he need only do so in accordance with DOC policy and seek prior permission from the  
15 Superintendent or his designee.

16  
17 Prison staff has a legitimate penological interest in inspecting an inmate’s outgoing mail.  
18 Witherow, 52 F.3d at 265. In addition, Defendants have shown that SCCC mailroom staff inspects  
19 and restricts outgoing inmate mail according to the clearly enumerated policy requirements of DOC  
20 Policy Directive 450.100 and not in an arbitrary and capricious manner. The Plaintiff has not shown  
21 that his interest in having this letter sent outweighs the prison’s interest in maintaining safety and  
22 security in its prisons. Accordingly, Plaintiff’s request for preliminary injunction should be denied.

23  
24 **D. Public Interest Favors Defendants**

1 As noted above, it is in the public's interest to be free from unchecked solicitation by prison  
2 inmates who may seek contraband or to engage in criminal activity while incarcerated. Thus, the  
3 Court finds that it is in the public interest to have prison officials visually inspecting out-going mail to  
4 determine whether it contains contraband material which threatens prison security or contains  
5 material threatening the safety of the recipient. This factor also weighs against Plaintiff's request for  
6 preliminary injunction and therefore, it should be denied.  
7

#### 8 **IV. CONCLUSION**

9  
10 The Court recommends that Plaintiff's motion for preliminary injunction (Dkt. # 18) be  
11 **DENIED.** A proposed order accompanies this Report and Recommendation.

12 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,  
13 the parties shall have ten (10) days from service of this Report to file written objections. *See also*  
14 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
15 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
16 72(b), the clerk is directed to set the matter for consideration on **February 2, 2007**, as noted in the  
17 caption.  
18

19 DATED this 4th day of January, 2007.  
20

21   
22 Karen L. Strombom  
23 United States Magistrate Judge  
24  
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